

Res 438

CONTRACT COVERSHEET

NOTE: Shaded areas are for County Executive review.

DEPARTMENT Administration	CONTRACT/ADDENDUM #: <u>12697</u>																											
1. This contract, grant or addendum: <input checked="" type="checkbox"/> AWARDS <input type="checkbox"/> ACCEPTS	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; text-align: center;">Contract</td> <td style="width:34%; text-align: center;">If Addendum, please include original contract number</td> <td style="width:33%; text-align: center;">Addendum</td> </tr> <tr> <td style="text-align: center;">↓</td> <td></td> <td style="text-align: center;">↓</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">POS</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Co Lesse</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;">Co Lessor</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Intergovernmental</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Purchase of Property</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Property Sale</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Other:</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Contract	If Addendum, please include original contract number	Addendum	↓		↓	<input type="checkbox"/>	POS	<input type="checkbox"/>	<input type="checkbox"/>	Co Lesse	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Co Lessor	<input type="checkbox"/>	<input type="checkbox"/>	Intergovernmental	<input type="checkbox"/>	<input type="checkbox"/>	Purchase of Property	<input type="checkbox"/>	<input type="checkbox"/>	Property Sale	<input type="checkbox"/>	<input type="checkbox"/>	Other:	<input type="checkbox"/>
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2. This contract is discretionary <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO																												
3. Term of Contract or Addendum: From: <u>3/1/2016</u> To: <u>2114</u>																												
4. Amount of Contract or Addendum none																												
5. Purpose: To lease commercial condo at Union Corners to Gorman to support affordable housing development																												
6. Vendor or Funding Source: Gorman & Co																												
7. MUNIS Vendor Code: 20377																												
8. Bid/RFP Number: 115052																												
9. If grant: Funds Positions? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Will require on-going or matching funds? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO																												
10. Are funds included in the budget? <input type="checkbox"/> YES <input type="checkbox"/> NO																												
11. Account No. & Amount, Org. & Obj. <u>CPADMIN 58720</u> Amount \$ <u>0</u> Account No. & Amount, Org. & Obj. _____ Amount \$ _____ Account No. & Amount, Org. & Obj. _____ Amount \$ _____																												
12. Is a resolution needed: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If "YES," please attach a copy of the Resolution. <u>2015-438</u> If Resolution has already been approved by the County Board, Resolution No. & date of adoption _____																												
13. Does Domestic Partner equal benefits requirement apply? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO																												
14. Director's Approval																												

CONTRACT REVIEW/APPROVALS

Initials	Ftnt	Date In	Date Out
<u>MA</u> Received	_____	<u>2-4-16</u>	_____
<u>CD</u> Controller	_____	_____	<u>2/4/16</u>
<u>RG</u> Corporation Counsel	_____	<u>2-4-16</u>	<u>2/4/16</u>
<u>RA</u> Risk Management	_____	<u>2/4/16</u>	<u>2/4/16</u>
_____ ADA Coordinator	_____	_____	_____
<u>CA</u> Purchasing Agent	_____	_____	<u>2/4/16</u>
_____ County Executive	_____	_____	_____

VENDOR

Vendor Name & Address
Contact Person
Phone No.
E-mail Address

Footnotes:


1. _____
2. _____

Return To: Name/Title: <u>Chuck Hicklin</u> Dept.: _____
Phone: <u>266-4109</u> Mail Address: _____
E-mail: _____

CERTIFICATION

The attached contract: *(Check as many as apply)*

- conforms to Dane County's standard Purchase of Services Agreement form in all respects
- conforms to Dane County's standard Purchase of Services Agreement form with modifications and is accompanied by a revision copy¹
- is a non-standard contract which has been reviewed or developed by corporation counsel which has not been changed since that review/development
- is a non-standard contract previously reviewed or developed by corporation counsel which has been changed since that review/development; it is accompanied by a revision copy¹
- is a non-standard contract not previously reviewed by corporation counsel; it is accompanied by a revision copy
- contains non-standard/indemnification language which has been reviewed or developed by risk management and which has not been changed since that review/development
- contains non-standard insurance/indemnification language which has been changed since review/development or which has not been previously seen by risk management; it is accompanied by a revision copy
- contains non-standard affirmative action/equal opportunity language which has been reviewed or developed by contract compliance and which has not been changed since that review/development
- contains non-standard affirmative action/equal opportunity language which has been changed since the earlier review/development by contract compliance or which has not been previously seen by contract compliance; it is accompanied by a revision copy¹

Date: 2/4/16 Signed: 

Telephone Number: _____ Print Name: Charles Briskin

MAJOR CONTRACTS REVIEW (DCO Sect. 25.20) This review applies only to contracts which both exceed \$100,000 in disbursements or receipts and which require county board review and approval.

EXECUTIVE SUMMARY *(Attach additional pages, if needed).*

1. **Department Head** Contract is in the best interest of the County.
Describe any deviations from the standard contracting process and any changes to the standard Purchase of Services Form Agreement.

Date: _____ Signature: _____

2. **Director of Administration** Contract is in the best interest of the County.
Comments:

Date: _____ Signature: _____

3. **Corporation Counsel** Contract is in the best interest of the County.
Comments:

Date: _____ Signature: _____

¹A revision copy is a copy of the contract which shows the changes from the standard contract or previously revised/developed contract my means of overstrikes (indicating deletions from the standard language) and underlining (showing additions to the standard language).

LEASE

In consideration of the mutual promises and covenants contained in this Lease, dated as of _____, 201__, County of Dane, Wisconsin (the "Landlord") and Gorman & Company, Inc., a Wisconsin corporation or its successors or assigns (the "Tenant") agree as follows:

1. PREMISES. Landlord agrees to lease to Tenant, and Tenant agrees to lease from Landlord, Unit 300 (the "Premises") of Carbon Condominium (the "Condominium"). Tenant acknowledges that the Condominium is governed by that certain Declaration of Condominium of Carbon Condominium, dated as of _____ (the "Condominium Declaration").

2. CONDITION OF PREMISES. Tenant acknowledges and agrees that Tenant is leasing the Premises "AS IS", and Landlord makes no warranties, express or implied, as to fitness, merchantability, use or condition of the Premises. Tenant leases the Premises without representation or warranty of Landlord, express or implied, in fact or by law, and without recourse, with respect to: (a) the condition of the Premises and (b) the ability to use the Premises for any particular purpose.

3. COMMON ELEMENTS. Tenant shall be entitled to the reasonable nonexclusive use of the common elements of the Condominium appurtenant to the Premises. Tenant's use of such common elements shall be subject to the terms of the Condominium Declaration.

4. TERM. The Lease term shall commence upon the date hereof and shall terminate on _____, 211__. [**Note: Term will be 98 years.**]

5. RENT. Tenant has paid to Landlord on the date hereof the sum of Twenty Dollars (\$20) as rent for the Premises for the entire Lease term.

6. UTILITIES AND SERVICES. Tenant shall pay when due all charges for all utilities used in the Premises.

7. USE. The Premises may be used and occupied for any lawful use. The Premises may not be used as an accessory use to the residential component of the Condominium. The Premises shall be a separate use. Tenant will not use the Premises in any manner that may increase the insurance risk or prevent the

obtaining of insurance. It is the intent of Tenant to sublease the Premises to a third party, which Landlord hereby acknowledges, subject to the terms and conditions of the Condominium Declaration.

8. **MAINTENANCE AND REPAIR.** Tenant shall, at its expense, keep and maintain in good order, condition and repair the Premises.

9. **COVENANTS.**

(a) **Compliance with Laws.** Tenant agrees to comply with all laws, orders, ordinances and regulations and with any direction made pursuant to law of any public officer, relating to Tenant's use of the Premises.

(b) **Surrender.** Tenant agrees upon the termination of this Lease for any reason to remove Tenant's personal property and trade fixtures and those of any other persons claiming under Tenant, and to quit and deliver up the Premises to Landlord peaceably and quietly in as good order and condition as the same are at the commencement of this Lease or thereafter may be improved by Tenant, reasonable use and wear, fire and other casualty loss excepted.

(c) **Personal Property Taxes.** Tenant agrees to pay, before delinquency, any and all taxes levied or assessed and which become payable during the Lease term upon Tenant's equipment, furniture, fixtures and other personal property located in the Premises.

(d) **Real Estate Taxes and Assessments.** Tenant agrees to pay, before delinquency, any and all real estate taxes and special assessments levied or assessed and which become payable during the Lease term upon the Premises.

(e) **Signage.** Tenant may place any signs on the exterior of the Premises provided they comply with applicable municipal ordinances.

(f) **Expenses of Operating the Premises.** Tenant shall, at its expense, obtain any and all services related to the operation of the Premises that it desires, including without limitation the provision of janitorial services, furniture, and supplies necessary for operation of the Premises in compliance with Section 7 hereof.

(g) Financing. Landlord shall not finance the Premises or otherwise encumber its interest in the Premises without Tenant's prior written consent.

10. **INSURANCE**. During the Lease term, Tenant shall keep in full force and effect, at its expense: (a) a policy of commercial general liability insurance covering the Premises, with a combined single limit of not less than \$1,000,000; and (b) insurance against fire, vandalism, malicious mischief and such other perils as are from time to time included in a "special form" property insurance policy, insuring Tenant's merchandise, trade fixtures, furnishings, equipment and all other items of personal property of Tenant located on or within the Premises, in an amount not less than their full replacement value. Tenant's commercial general liability insurance policy shall name Landlord and Tenant as insureds. A copy of the paid-up policies evidencing such insurance or certificates of insurers shall be delivered to Landlord prior to the commencement date of this Lease and upon renewals not less than 30 days prior to the expiration of such coverage. The property insurance for the Premises shall be maintained in accordance with the requirements of the Condominium Declaration.

11. **DAMAGE OR DESTRUCTION**. In case of damage to the Premises by fire, vandalism, malicious mischief or any other casualty, the Premises may be repaired or rebuilt in accordance with the requirements of the Condominium Declaration.

12. **INDEMNIFICATION**. Tenant shall defend and indemnify Landlord and save it harmless from and against any and all liability, damages, costs and expenses, including reasonable attorneys' fees, arising from any negligence or willful misconduct of Tenant or its officers, members, contractors, licensees, agents, servants, employees, guests, invitees, visitors or subtenants in or about the Premises.

13. **IMPROVEMENTS AND ALTERATIONS**. Tenant may make, at any time and from time to time, any alterations or improvements ("Improvements") to the Premises it desires including, without limitation, alterations to Improvements previously made by Tenant. All Improvements shall be made at Tenant's sole cost and expense. Tenant shall obtain all necessary permits, and Landlord shall cooperate as needed by Tenant to obtain said permits; further, Tenant shall provide Landlord with copies thereof. Tenant shall promptly repair any damage and perform any necessary cleanup resulting from any Improvements. All Improvements (except trade fixtures, furniture and equipment

belonging to Tenant) in existence upon termination of this Lease shall be Landlord's property and shall remain upon the Premises, all without compensation to Tenant. Tenant agrees not to create, incur, impose or permit any lien against the Premises by reason of any Improvement and Tenant agrees to hold Landlord harmless from and against any such lien claim. At its expense, Tenant shall cause to be discharged, within thirty days of the filing thereof, any construction lien claim filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to, or on behalf of Tenant.

14. EMINENT DOMAIN. In the event the entire Premises is lawfully condemned or taken in any manner for any public or quasi-public use or purpose, or sold or conveyed in lieu of condemnation, this Lease shall terminate as of the date of such taking or conveyance. In the event only a portion of the Premises is taken or conveyed, the Premises shall be repaired or rebuilt in accordance with the requirements of the Condominium Declaration. Landlord shall be entitled to all awards payable to Landlord for its fee interest in the Premises resulting from a taking, and Tenant shall be entitled to all awards payable to Tenant for its leasehold interest in the Premises resulting from a taking including, without limitation, moving expenses, the cost of any Improvements made by Tenant to the Premises and losses incurred by Tenant as a result of the taking.

15. ASSIGNMENT AND SUBLETTING. Tenant may assign this Lease and/or sublet all or any portion of the Premises, without Landlord's consent, upon such terms as Tenant desires. Landlord acknowledges that Tenant may charge its subtenants higher rents than the rent that Tenant is paying under this Lease. Landlord shall have no right to any profits made by Tenant as a result of Tenant subletting all or any portion of the Premises.

16. DEFAULT.

(a) Defaults. If Tenant (i) fails to pay any installment of rent or other charges hereunder when due and such default is not cured within five days after receipt of written notice thereof from Landlord, or (ii) fails to perform any other covenant, term, agreement or condition of this Lease and such default is not cured within 30 days after receipt of written notice thereof from Landlord (unless the default is of a nature that it cannot be cured within 30 days, in which event Tenant must commence the cure within the 30-day period and diligently prosecute same to completion) then Landlord, in addition to all other rights and remedies available to Landlord at law or in equity or by other provisions hereof, may immediately re-enter the Premises and remove all persons and property and, at

Landlord's option, terminate this Lease or terminate Tenant's right to possession of the Premises without terminating the Lease. Tenant further agrees that in case of any such termination Tenant will indemnify Landlord against all damages which Landlord may incur by reason of such termination including, without limitation, reasonable attorneys' fees.

If Tenant shall default in the observance or performance of any term or covenant of this Lease, or if Tenant shall fail to pay any sum of money, other than rent required to be paid by Tenant hereunder, Landlord may, without waiving or releasing Tenant, remedy such default at the expense of Tenant after notice and expiration of any applicable cure period. If Landlord makes any expenditures or incurs any obligations for the payment of money in connection with Tenant's default including, but not limited to, reasonable attorneys' fees, Tenant shall pay to Landlord as additional rent such sums paid or obligations incurred, with costs and interest at the rate of 12% per year.

(b) Unpaid Sums. Any amounts owing from Tenant to Landlord under this Lease shall bear interest at the annual rate of 12% calculated from the date due until the date of payment.

17. **ESTOPPEL CERTIFICATE**. Within ten (10) days after written request from Landlord, Tenant shall execute, acknowledge and deliver to Landlord an estoppel certificate in form and content reasonably acceptable to Landlord. Within ten (10) days after written request from Tenant, Landlord shall execute, acknowledge and deliver to Tenant an estoppel certificate in form and content reasonably acceptable to Tenant.

18. **QUIET ENJOYMENT**. Landlord covenants that if Tenant shall pay the rent and observe and perform all the terms, covenants and conditions of this Lease on its part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises subject to the terms and conditions of this Lease.

19. **CONDOMINIUM OBLIGATIONS AND RIGHTS ASSIGNED TO TENANT**. All rights (other than approval related to the sale of the Premises) and obligations of the Landlord pursuant to the Condominium Declaration are hereby assigned by Landlord and assumed by Tenant, including without limitation the right to vote and the obligation to pay assessments levied by the Condominium.

20. **AFFORDABILITY REQUIREMENTS**. As of the date hereof, Tenant or its affiliates have constructed low-income housing tax credit residential

rental units (the "Affordable Units"). The Affordable Units are governed by that certain Land Use Restriction Agreement (the "WHEDA LURA"), executed by Union Corners Apartments, LLC in favor of the Wisconsin Housing and Economic Development Authority ("WHEDA") and recorded against the Affordable Units in the office of the Register of Deeds for Dane County. Landlord and Tenant are entering into this Lease, in part, because Tenant or its affiliates are providing the Affordable Units pursuant to the conditions set forth in the WHEDA LURA. A violation of the WHEDA LURA, as determined by WHEDA in its reasonable discretion, that occurs during the Affordability Period (as defined below) and upon which WHEDA elects to enforce its rights pursuant to the WHEDA LURA shall be deemed an event of default by Tenant of this Lease. Upon an event of default arising from this Section 20, at Landlord's sole discretion, Landlord may require Tenant to purchase the Premises from Landlord in exchange for a lump-sum payment of \$554,000.00. Landlord agrees and acknowledges that its right to require Tenant to purchase the Premises is only triggered by a successful enforcement action by WHEDA of a violation by Tenant (or its affiliates) of the WHEDA LURA. The "Affordability Period" shall mean the term of the WHEDA LURA.

21. MISCELLANEOUS PROVISIONS.

(a) Successors and Assigns. This Lease shall inure to and be binding upon Landlord and Tenant and their respective successors and assigns.

(b) Non-waiver. Waiver by Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition of this Lease.

(c) Entire Agreement. This Lease contains all covenants and agreements between Landlord and Tenant relating to the Premises. No prior agreements or understandings pertaining thereto shall be valid or of any force or effect. This Lease shall not be altered, modified or amended except in writing signed by Landlord and Tenant.

(d) Severability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

(e) Notices. All notices which Landlord or Tenant may be required, or may desire, to serve on the other may be served by personal service or by mailing by registered or certified mail, postage prepaid, at such address as the parties may from time to time designate to the other in writing. In addition, any notice sent by Landlord or by Tenant pursuant to this Lease shall also be sent to:

RBC Tax Credit Equity, LLC
600 Superior Avenue, Suite 2300
Cleveland, Ohio 44114
Attention: President and General Counsel

The time of rendition of such notice shall be deemed to be the time when the notice is delivered to or rejected by the recipient.

In Witness Whereof, the parties hereto have executed this Lease as of the date first set forth above.

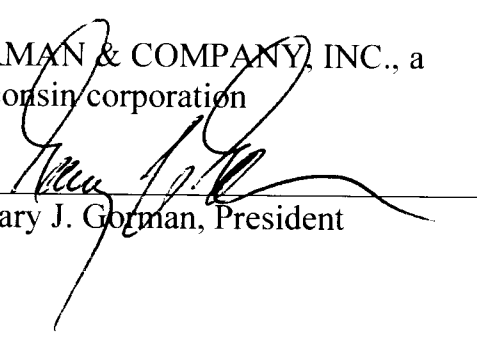
LANDLORD:

COUNTY OF DANE, WISCONSIN

BY _____
Its _____

TENANT:

GORMAN & COMPANY, INC., a
Wisconsin corporation

BY  _____
Gary J. Gorman, President